

**11—64.12(8A) Tax-sheltered annuities (TSAs).**

**64.12(1) Administration.** The director is authorized by 2003 Iowa Code Supplement section 8A.402 to administer a tax-sheltered annuity program for eligible employees.

**64.12(2) Definitions.** The following definitions shall apply when used in this rule:

“*Company*” means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under 2003 Iowa Code Supplement section 8A.438.

“*Employee*” means a full-time or part-time nontemporary employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system.

“*Employer*” means the state of Iowa.

“*Participating employee*” means an employee participating in the plan.

“*Plan*” means the tax-sheltered annuity plan authorized in 2003 Iowa Code Supplement section 8A.438.

“*Plan administrator*” means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

“*Plan year*” means a calendar year.

“*Policy*” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and 2003 Iowa Code Supplement section 8A.438.

“*Salary reduction agreement*” means the tax-sheltered annuity agreement signed by the participating employee to begin or change payroll deductions.

**64.12(3) Eligibility.**

*a. Initial eligibility.* Any full-time or part-time nontemporary employee who is regularly scheduled to work for 20 or more hours per week and who works for the department of education or the board of regents administrative office is eligible to defer compensation under this rule. Final determination on eligibility shall rest with the plan administrator.

*b. Eligibility after terminating deferral of compensation.* Any employee who terminates the deferral of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4) “a” and “b” and 64.12(6) “b.”

**64.12(4) Enrollment and termination.**

*a. Enrollment.* Employees may enroll in the tax-sheltered annuity plan at any time. Employees are responsible for selection and monitoring of their investments. The request for a salary reduction agreement must be submitted to the employing agency’s personnel assistant for approval in accordance with subrule 64.12(11). A satisfactorily completed enrollment form must be received by the personnel assistant no later than the fifteenth day of a calendar month in order for deductions to begin with the first paycheck of the following month.

*b. Forms submission.* The personnel assistant shall provide the plan administrator with the applicable enrollment form in a timely manner.

*c. Termination of participation in the plan.* A participating employee may terminate participation in the plan by providing to the employing agency’s personnel assistant written notification on a form required by the plan administrator.

*d. Availability of forms.* It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the agency of employment. It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The plan administrator shall prescribe the forms and advise agencies as to their availability.

**64.12(5) Tax status.**

*a. FICA and IPERS.* The amount of compensation deferred under the salary reduction agreement shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

*b. Federal and state income taxes.* The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

**64.12(6) Deductions from earnings.**

a. *When deducted.* Each participating employee shall have the option as to whether the entire monthly amount of deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.

b. *Deferral amount changes.* Participating employees may increase or decrease their monthly deferral amount by providing to the employing agency's personnel assistant written notice on a form required by the plan administrator. Contributions can be changed to permit a one-time lump sum deferral from the last paycheck due to termination of employment.

c. *Maximum deferral limits.* Employees' deferrals may not exceed the maximum limit set forth in federal law.

d. *Minimum amount deferred.* The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25.

**64.12(7) Companies.**

a. *Identification number.* Each participating company shall be assigned an identification number by the plan administrator.

b. *Time of payment.* The plan administrator shall transmit payments to the companies within 15 business days after the last workday of each month.

c. *Annual status report.* Each company shall provide to the participating employee at the employee's home address an annual status report stating the value of each participant's policy. This practice shall be continued even after the participating employee terminates or cancels participation in the plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. *Crediting of accounts.* Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. *Solicitation.* There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator.

f. *Dividends.* The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. *Removal from participation.* Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

**64.12(8) Disposition of funds.**

a. *Termination of employment.* An employee who has terminated state employment (including retirement) must make arrangements directly with the company to defer distributions or withdraw funds under any option available in the policy. Distribution will be made in accordance with applicable IRS regulations.

b. *Financial hardship.* A participating employee may request that the company allow the withdrawal of some or all of the contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New deferrals to a TSA will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

c. *Method of payment.* The employee must notify the company of the intent to withdraw funds.

d. *Federal and state withholding taxes.* It shall be the responsibility of the company or mutual fund provider, when making payments to the former employee, to withhold the required federal and state income tax based on W-4P, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

e. *Federal penalties.* Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

**64.12(9) Group plans.**

*a. Availability.* 2003 Iowa Code Supplement section 8A.311 provides that the director may arrange for the purchase of group contracts for employees.

*b. Size of groups.* One or more employees shall constitute a group under this plan.

**64.12(10) General.**

*a. Orientation and information meetings.* Agencies may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings. The presence of a representative of a company will be interpreted as solicitation.

*b. Location of policies.* The company shall send the original policy to the employee.

*c. Number of companies.* Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.

*d. Company changes.*

(1) If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 64.12(6) "b."

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy in accordance with applicable IRC Section 403(b) provisions. It is the responsibility of the employee and the company's agent to coordinate this change with the affected companies.

(3) An employee may change companies at any time during the calendar year.

*e. Deferred compensation or tax-sheltered annuity participation—maximum contribution.* Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

*f. Employee termination from a tax-sheltered annuity eligible agency.* When an employee leaves an agency that is eligible for tax-sheltered annuity participation under IRC Section 403(b), no further tax-sheltered annuity deductions will be allowed.

*g. Direct transfer/rollover.*

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

**64.12(11) Forms.** The administration of the TSA plan shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

*a. Salary reduction agreement.* This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee's compensation as part of an IRC Section 403(b) contract.

*b. Application for policy.* The company to which the participating employee elects to defer compensation shall supply a policy application form. The participating employee shall complete the application. The completed application forms shall show the owner and beneficiary of the policy to be the participating employee.

**64.12(12) Forfeiture.** IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

**64.12(13) Nontransferability.** The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.